ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
ROBERT J. GLADWIN, JUDGE

DIVISION I

CACR07-532

JANUARY 23, 2008

GARY NIXON	APPELLANT	APPEAL FROM THE SEBASTIAN COUNTY CIRCUIT COURT [NO. CR-2004-1368]
V.		HON. NORMAN WILKINSON, CIRCUIT JUDGE
STATE OF ARKANSAS	APPELLEE	AFFIRMED

On February 14, 2007, the Sebastian County Circuit Court found appellant Gary Nixon guilty of violating the terms and conditions of his 2004 suspended imposition of sentence. Appellant's sole issue on appeal is whether the State provided sufficient evidence to uphold the revocation of his suspended sentence. We affirm the revocation.

Appellant was convicted in December 2004 of terroristic threatening in the first degree, a Class D felony, for which he received a one-year jail sentence followed by a five-year suspended imposition of sentence. He was released on October 28, 2005. On December 27, 2006, the State filed an amended petition to revoke, which alleged that

appellant had committed the following offenses: theft of property; forgery; attempted capital murder; capital murder; felon in possession of a firearm and; aggravated assault.

At the hearing on the State's petition to revoke, Officer Daniel Honeycutt testified that appellant pointed a gun at him from the backseat of a car. He further stated that appellant told him that he had woken that morning knowing that he was facing some jail time and that he did not want to go back and that he was going to kill the first police officer that he came across. Officer Jeff Carter testified that he saw appellant with a sawed-off shotgun and that appellant shot at him. Detective Ronald Scarmardo, Jr., testified that he witnessed appellant leaning over the top of the car with a shotgun and firing at Officer Carter. Detective Scarmardo testified that, after appellant fled, appellant pointed the shotgun at him and eventually fired.

After the shootout, appellant allowed himself to be apprehended. Detective David Joplin testified that during his interview with appellant, appellant stated that he showed an officer his shotgun, but denied pointing it at him. Appellant also stated that he showed a second officer his shotgun when he was fleeing from that officer, and that he fired a shot in the direction of the police officer because the officer was shooting at him. Detective Joplin stated that he understood appellant's statement to mean that it was appellant's intent to get away, not to harm the officers. Defendant Shawn Mumbower, the person driving the car from which appellant was seen pointing the shotgun, testified that appellant had a shotgun, and that he heard a shotgun blast during the shootout with police.

At the end of the State's case and again at the close of all evidence, appellant moved for a directed verdict arguing insufficiency of the evidence. The trial court granted the motion as to the three counts of forgery, but denied it as to the other allegations. The trial court then found by a preponderance of the evidence that appellant violated the terms of his release.

In order to revoke probation or a suspension, the trial court must find by a preponderance of the evidence that the defendant inexcusably violated a condition of that probation or suspension. Ark. Code Ann. § 5-4-309(d) (Repl. 2006); *Harris v. State*, 98 Ark. App. 264, ___ S.W.3d ___ (2007). The trial court's findings will be upheld on appeal unless they are clearly against the preponderance of the evidence; because a determination of a preponderance of the evidence turns on questions of credibility and weight to be given to the testimony, we defer to the trial judge's superior position. *Jones v. State*, 355 Ark. 630, 144 S.W.3d 254 (2004). In order to revoke a suspended sentence, the State need only prove that the defendant committed one violation of the conditions. *Ramsey v. State*, 60 Ark. App. 206, 959 S.W.2d 765 (1998). Evidence that is insufficient to support a criminal conviction may be sufficient to support a revocation. *Haley v. State*, 96 Ark. App. 256, ___ S.W.3d ___ (2006).

Appellant contends that the evidence is not sufficient to compel a reasonable mind to reach a conclusion one way or the other without resting on conjecture. He claims that he denied shooting at the officers but that the officers did shoot at him. He claims that the

officers who testified had a reason to mislead the court because one of them hit a bystander during the shootout, and the police had to justify their actions.

The State contends, and we agree, that the officers' testimony identified appellant as the one firing at them. By firing on the officers, appellant violated numerous laws. Further, appellant was in possession of a firearm. These were violations of the terms and conditions of his suspended sentence based on his 2004 conviction and provided the basis for the trial court's revocation of his suspended sentence. We up hold the trial court's finding by a preponderance of the evidence that appellant inexcusably failed to comply with the terms and conditions of his suspended sentence.

Affirmed.

PITTMAN, C.J., and BAKER, J., agree.